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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,899	01/17/2006	Thomas Hartmann	P31.249 USA	9922

23307 7590 11/26/2008  
FOX ROTHSCHILD LLP  
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EXAMINER
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LAZORCIK, JASON L

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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11/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,899	<b>Applicant(s)</b> HARTMANN ET AL.	
	<b>Examiner</b> JASON L. LAZORCIK	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008 and 28 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-39 is/are pending in the application.
- 4a) Of the above claim(s) 18-27, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 28-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II claims, drawn to a device for controlling a glass gob mass, corresponding to newly presented claims 28-37 in the reply filed on August 12, 2008 is acknowledged.
2. The traversal is on the ground(s) that unity of invention was not found to be lacking at the international level in the International Preliminary Report on Patentability. Applicants further allege that the Examiner failed to identify a "special technical features" as defined in PCT rule 13.2 which link the identified groups of claims (see page 12), namely;
  - a. The mass reference value difference for a glass gob (after it is created is determined and used to change the plunger movement profile used for a subsequent gob (the plunger movement profile influences the mass of the gob created) so that the mass of the subsequent gob moves closer to the mass reference desire value.
3. These arguments are not found persuasive.
4. First, the Office is in not bound to the findings of the International Search Authority, and arguments asserting otherwise are held to be moot.
5. Next with respect to the required special technical features, Applicant was notified in the requirement for restriction/election that the claims were grouped as either being directed to a method or alternately as being directed to an apparatus. Applicant is further advised that the apparatus claims are defined by the structure they recite, and

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not, *per se*, by the manner in which the apparatus are operated. Specifically MPEP §2113 states that; a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Exparte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)

6. In the instant case, the Mueller (US 6,978,640) disclosed apparatus was shown to provide for every “special” structural feature of Applicants claimed apparatus, and Applicant provided no arguments in rebuttal to this position.

7. Although the prior art does not explicitly provide for the claimed manner of operation, as contested above by Applicant, the contested limitation is construed as a statement of intended use. Where the Mueller device provides for a control unit and where said control unit is construed as capable of operating according to the claimed mode, the prior art device is understood to meet every structural feature of Applicants claimed apparatus. Since the Mueller disclosed device teaches every “special” structural limitation of Applicants claimed apparatus as set forth in original claim 11, the claimed inventions of Groups I and II lack corresponding technical features.

8. The foregoing notwithstanding, Applicant is advised that the reference to DiFrank (US 5,660,610) as applied to the claimed invention below teaches every element of Applicants claimed apparatus. Where the noted reference teaches every structural feature of at least the claimed apparatus, Applicant is advised that the claimed method and apparatus invention are not linked by a “special technical feature” and restriction

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between the apparatus and method claims is proper for analogous reasons to those presented in the March 12, 2008 restriction requirement.

9. In addition, DiFrank teaches that the mass of the gob may be placed under automated control (col. 2, lines 62-64 and/or Col. 4, lines 40-49). The disclosed control process is understood to read upon Applicants claimed special technical feature wherein "The mass reference value difference for a glass gob (after it is created is determined and used to change the plunger movement profile used for a subsequent gob (the plunger movement profile influences the mass of the gob created) so that the mass of the subsequent gob moves closer to the mass reference desire value".

Although not deemed as prerequisite for finding the lack of unity, the noted feature disclosed in the DiFrank reference further underscores the fact that no special technical feature links the method claims with the apparatus claims.

10. The requirement is still deemed proper and is therefore made FINAL.

11. Claims 18-27 and 38-39 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 12, 2008.

### ***Specification***

1. The amendments filed August 12, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention.

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(I) Amendments to Specification dated August 12, 2008

2. The added material which is not supported by the original disclosure is as follows:

3. Regarding the amendments to the paragraph beginning on page 10, line 7 (see pages 2-3 of noted reply), the original Specification discloses a mechanism provided in order to be able to adjust the restrictor pipe 7 horizontally "with respect to the symmetrical arrangement around the dual gob outlet 5,5". The instant amendment alters the language to read that the mechanism is able to adjust the restrictor pipe 7 horizontally "for the purpose of achieving a symmetrical arrangement". The new limitation is not commensurate in scope with the deleted passage and does not appear to find support in the Specification as originally filed.

***Claim Objections***

4. **Claim 29 and 30** are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

5. Claims 29 and 30 both set forth limitations directed to an intended mode of operation for the claimed device for regulating the mass of glass. Neither of the identified claims present limitations which further limit the structure of the device of the respective parent claim. In view of the foregoing, the identified claims are not further treated on the merits.

***Claims Construction under 35 U.S.C. §112, sixth paragraph***

Claim 28 recites the limitation of a “means for determining mass reference value differences for the glass gobs” in line 12. The instant limitation is deemed to pass the three prong test for compliance under 35 U.S.C. §112, sixth paragraph.

Although the format of the instant limitation complies with the requirements of 35 U.S.C. §112, sixth paragraph, the written description fails to explicitly describe the corresponding structure or structures which actually perform the claimed function, namely “determining mass reference value differences for the glass gobs”, and one of ordinary skill in the art would not necessarily identify the precise structure(s) from the written description.

It follows that since no structure disclosed in the embodiments of the invention is expressly linked to the claimed function, the specification lacks corresponding structure as required by 35 U.S.C. 112, sixth paragraph and fails to comply with 35 U.S.C. 112, second paragraph as noted in the following section. For purposes of examination, said limitation is accorded the broadest reasonable interpretation and is not limited to “corresponding structure...and equivalents thereof”.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 28-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention

8. Claim 28, lines 12 recites the limitation “means for determining mass reference value differences for the glass gobs”. As noted above in the claims analysis section under 35 U.S.C. §112, sixth paragraph, the written description fails to explicitly describe the corresponding structure or structures which actually perform the claimed function, determining mass reference value differences. Further, one of ordinary skill in the art would not necessarily be apprised of the precise structure(s) intended to perform this function from the written description. It follows, with respect to the noted limitations, that Applicant has failed to particularly point out and distinctly claim the invention as required by 35 U.S.C. 112, second paragraph.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:



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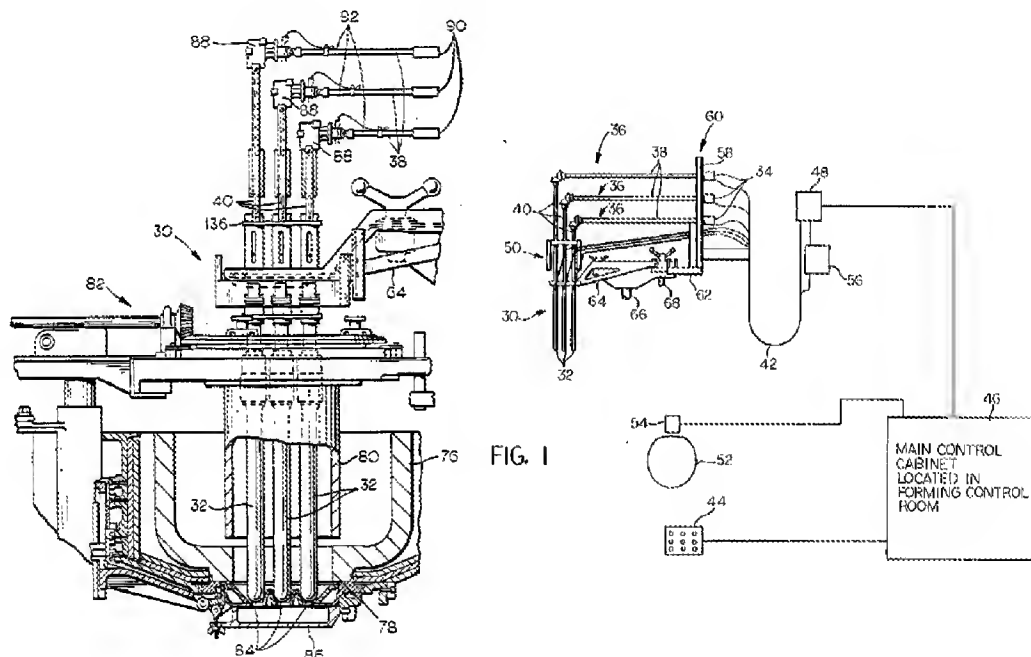
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**11. Claims 28-33 and 35-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DiFrank (US 5,660,610).**

12. Regarding **Claim 28**, DiFrank (US 5,660,610) teaches a device for regulating the mass of glass gobs which is intended for use with a glass forming machine (Col. 2, lines 51-64) of the blow and blow or press and blow type (e.g. I.S. Machine). With particular reference to excerpt figures 1 and 4 (see below), DiFrank teaches a feeder (30) comprising;

- a. a feeder head (76),
- b. at least one plunger (32) disposed in the feeder head.
- c. A means for determining mass reference values (col. 2, lines 62-64 and/or Col. 4, lines 40-49)
- d. At least one plunger holder (64) extending substantially in a horizontal direction [**Claim 31,35**]
- e. Height adjusting devices (34) for moving respective plungers (32) in relation to the plunger holder (64) [**Claim 33, 37**]
- f. A control unit (46) including an associated drive controller or “drive controller of the plunger holder” [**Claim 36**]

- g. A restrictor pipe (80) surrounding the at least one plunger
13. Each of the plungers (32) is independently adjustable upward and downward in the feeder head relative to the respective feeder bowl orifice (84) in a manner which permits control over the weight of the containers being formed (Col. 1, lines 26-32; col.4, line 11-13). Stated alternately, it is understood that each plunger (32) in the DiFrank disclosed feeder head may be provided with a "changeable movement profile"



14. FIG 4

15. Although the DiFrank reference does not explicitly require that the disclosed apparatus is utilized "for each preform station of each section" of the individual section machine (as per Claim 28, lines 14-15), such an application is either implied by the reference or would have been obvious at the time of the invention for one of ordinary skill in the art of individual section type glass forming machines. That is, although the DiFrank reference does not explicitly disclose the instant apparatus at every preform

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station of each section, the mere duplication of parts has no patentable significance unless a new and unexpected result is produced (*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)). In the instant case, duplication of the feeder apparatus constitutes a trivial extension over the prior art for one having an ordinary level of skill in the art at the time of the invention.

**16. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiFrank (US 5,660,610) in view of Ayala-Ortiz (US 4,682,998).**

17. As set forth in the rejection of claims above, DiFrank teaches every element of Applicants claimed invention including, *inter alia*, a glass feeder head with independently adjustable plungers disposed therein for controlling a mass of molten glass discharged from said feeder head. The reference additionally teaches the use of "restrictor pipe" (80) disposed within the feeder head.

(I) DiFrank is silent regarding axial adjustability of the restrictor pipe (80) or the associated control circuit axial adjustment of the pipe

18. Regarding **Claim 34**, DiFrank is silent regarding the axial adjustability of the restrictor pipe (80) or an associated control circuit to compensate for the changes in level or viscosity of the molten glass

(II) An axially adjustable restrictor pipe and control circuit represent obvious modifications to the DiFrank apparatus in view of the Ayala-Ortiz disclosure

19. The United States patent to Ayala-Ortiz teaches a very closely related glass feeder head to that disclosed in the DiFrank reference which includes, *inter alia*, a

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feeder bowl (1) with orifices (2') for dispensing molten glass, vertically reciprocating plungers (7) disposed within the feeder head, and a rotating restrictor tube (3) for homogenizing said molten glass and for regulating passage of the molten glass towards the orifice (see Figure 1 below). Ayala-Ortiz teaches that in order to increase reliability of the gob forming apparatus, the restrictor tube (3) is provided with a reciprocating mechanism (8) for axially adjusting the position of the tube within the feeder head (1). Said tube (3) and reciprocating mechanism (8) are subject to operation of a control circuit designed to compensate for various operating parameters including temperature, homogeneity, viscosity of the glass as well as the level of the molten glass in the feeder bowl (col. 2, lines 19-46).

20. Ayala-Ortiz teaches that such an axially adjustable restrictor tube arrangement paired with an associated control system is advantageous for production of glass gobs and glass articles with the required weight (col. 2, lines 49-54). Further, Applicant appears to acknowledge that axially controlled restrictor tubes similar to the Ayala-Ortiz arrangement are known in the art and would be recognized as such by one of ordinary skill. On this matter, Applicant states that (see Specification, page 15); "The axial position of the restrictor pipe serving as the control variable can be changed in a manner which is known per se as shown by the double arrow 8" (page 15).

21. In view of the foregoing, it would have been obvious for one of ordinary skill in the art to incorporate the axially adjustable restrictor tube of Ayala-Ortiz into the DiFrank apparatus. Such a modification would have been obvious for one of ordinary skill seeking to more closely regulate the mass of glass gobs and the glass articles formed

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therefrom. Further, Applicant appears to acknowledge that such modifications are per se known in the art and would be recognized as an obvious extension over the DiFrank disclosed apparatus.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. United States patent references to Leidy (US 5,885,317), Nafziger (US 5,779,749), and Duga (US 4,551,163) are all construed to be closely related to Applicants claimed molten glass feeder head. That is, each disclosed apparatus provides for independent control over vertically reciprocating plungers within the feeder head assembly. Any reply to the instant Official Action should carefully weight the scope and content of each reference in comparison to the instant claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON L. LAZORCIK whose telephone number is (571)272-2217. The examiner can normally be reached on Monday through Friday 8:30 am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason L Lazorcik/  
Examiner, Art Unit 1791  
23.